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Peay, T Michael

From: Brancato, Gilda M
Sent: Tuesday, July 06, 2004 7:17 PM
To: Peay, T Michael
Cc: Solomon, Steven A
Subject: FW: Secret detentions

BE129

another article on the disappeared. Mike, have our september one week formal negotiations on the disappearances treaty been scheduled yet? many thanks, gilda

-----Original Message-----

From: Mallonek, Tom V
Sent: Monday, June 28, 2004 10:14 AM
To: Alder, Lois L; Blanck Jr, John I; Cook, Daphne W; Dalton, Robert E; Dennis, Michael J; Dolan, JoAnn; Haines, Avril D; Legal-L-HRR-dl
Subject: Secret detentions

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Washington Times, June 28, 2004 - pg. 17

Torturing Suspected Terrorists?

By Nat Hentoff

Much of the media eventually may lose interest in the contention of administration lawyers - in leaked Pentagon and Justice Department reports - that the president, as commander in chief in a war on terrorism, has the authority to justify selective use of torture on prisoners allegedly linked to terrorism. But in a letter to the New York Times, Dr. Allen Kelley, Director of the Bellevue-NYU Program for Survivors of Torture, sounds a warning:

"The notion that torture is justified or effective in eliciting information is misguided and dangerous. Individuals so brutalized will say whatever they think their interrogators want to hear."

Meanwhile, even weeks later, the media has almost entirely ignored the May 16 ABC Television "Nightline" program titled "The Disappeared." It focused not on whether, and when, a congressional statute and international treaties we've signed can be bypassed, but rather, on an operation apparently even more disconnected from our laws.

"Nightline" focused on super-secret CIA interrogation centers overseas. "The inmates are believed to make up a who's who of the top al Qaeda leadership," said reporter Chris Bury. "But even their names are classified. Some of them may never be released. For all practical purposes, they have just disappeared."

Obviously, it's essential to get information from leading terrorists. But, Mr. Bury continued, these prisons "operate entirely outside the U.S. judicial system, according to a set of rules approved by the Justice Department. But like everything else about the CIA's prisons, those rules are also top secret."

As the May 24 edition of Newsweek reported, after the president was assured by his legal advisers that the Geneva Conventions do not apply to the questioning of such terrorist prisoners, his directive "authorized the CIA to set up a series of secret detention facilities outside the United States, and to question those held in them with unprecedented harshness."

"Nightline" broadcast a news clip where the president declared: "You need to have a president who understands

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you can't win this war with legal papers. We've got to use every asset at our disposal."

Though most of the media has ignored this story, there has been some earlier coverage on the secret CIA interrogation centers, such as in the Dec. 26, 2002, story by The Washington Post on prisoners in a CIA facility at Bagram Air Force base in Afghanistan. They were systematically subjected to abuses veering on torture. But that story died soon after.

Mr. Bury, speaking of the series of secret CIA prisons beyond the reach of the American rule of law, asked: "Since when are people in American custody allowed simply to disappear into a black hole?"

Appearing on the program was retired FBI agent Jack Cloonan, on the job for 27 years and the senior agent on the FBI's "bin Laden Squad" in New York. Knowing from experience how vital it is to get information from these high-echelon terrorists, Mr. Cloonan also wonders:

"What are we going to do with these people (in the CIA secret prisons) when we're finished exploiting them? Are they gonna disappear? Are they stateless? I mean, what are we gonna explain to people when they start asking questions about where they are? Are they dead? Are they alive? What oversight does Congress have?"

On the same program, Rep. Jane Harman of California, ranking Democrat on the House Intelligence Committee, said that she wants "to save American lives, but I want to do it within the constraints of U.S. and international law ... I think the oversight process in Congress right now is less than it needs to be.

"The people we're fighting don't abide by the rules. But if we don't follow the rule of law, what are we fighting for?"

"Nightline" reporter John McWethy, the principal reporter on the story, said that "a CIA official claims the prisoners are not being tortured. As for the details of where they are being held, exactly how they are being treated and what the U.S. plans to do with them, that is all a secret. When asked why, an official from the CIA explained, that's a secret, too." Now that George Tenet has resigned as head of the CIA, will he disclose some of those secrets in the interest of justice? After all, international treaties we have signed forbid such bottomless secrecy about such prisoners.

What also concerns me, as a journalist, is why the great majority of the print, broadcast and other media did not quickly follow up on the "Nightline" report. Later, I asked Mr. Bury if he had seen any meaningful coverage of that program. He had not. Neither did I. But recently, other reports were emerging about the secret prisons - especially Human Rights First's documented "Ending Secret Detentions."

We did previously find out from the May 16 New York Times that one of most important al Qaeda prisoners, Khalid Shaikh Mohammed, was somewhere "strapped down forcibly, pushed under water and made to believe he might drown."

I can't say I felt terribly sorry for him; but are we ever going to know what else is being done to him, and to others of the CIA's super-secret prisoners? Should we care whether they entirely disappear? Even these mass murderers?

What do you think?

Tom Mallonek

*Analyst for Boundaries - Boundary Waters - Conservation - Environment - Fisheries - Human Rights - Maritime Matters
Office of the Assistant Legal Adviser for Treaty Affairs (L/T)*

5420 HST

phone 202-647-1336 (direct)

fax 202-736-7541